

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
On Brief October 12, 2001

DOCTOR THOMAS PONCHIK
v.
DAVID LARE, FRED FIGUEROA, GEORGIA CROSS,
WHITEVILLE CORRECTIONAL FACILITY, AND
CORRECTIONS CORPORATION OF AMERICA

Appeal from the Circuit Court for Hardeman County
No. 9330 Jon Kerry Blackwood, Judge

No. W2001-00769-COA-R3-CV - Filed July 23, 2002

This is a civil lawsuit filed by a prisoner against the prison facility at which he was housed. The plaintiff prisoner filed this action *in forma pauperis*, claiming he was wrongfully terminated from his prison job. The trial court dismissed his claim with prejudice, apparently finding the plaintiff did not satisfy the requirement of Tennessee Code Annotated § 41-21-805 that he file a complete list of previous lawsuits filed, or the requirement of Tennessee Code Annotated § 41-21-806 that he state the date his grievance was filed and the date of the decision of the grievance committee. The plaintiff appeals. We reverse, finding that the plaintiff was not an inmate within the statutory definition and, therefore, the requirements of Tennessee Code Annotated §§ 41-21-805 and 806 did not apply.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court is Reversed and Remanded

HOLLY KIRBY LILLARD, J., delivered the opinion of the court, in which W. FRANK CRAWFORD, P.J., W.S. and ALAN E. HIGHERS, joined.

Doctor Thomas Ponchik, Sayre, Oklahoma, Appellant, Pro Se.

Tom Anderson, Jackson, Tennessee, for the appellees, David Lare, Fred Figueroa, Georgia Cross, Whiteville Correctional Facility, and Corrections Corporation of America.

OPINION

Plaintiff Doctor Thomas Ponchik ("Ponchik") was incarcerated at the Whiteville Correctional Facility ("WCF") pursuant to a contract between the Wisconsin Department of Corrections and the defendant, Corrections Corporation of America ("CCA"), which owns and operates WCF. Ponchik

worked in the "food services" department of the WCF until December 14, 1998, when he was terminated from that job. Thereafter, Ponchik filed a grievance asserting that the termination was in violation of WCF policy. The prison grievance committee denied this grievance.

On October 31, 2000, Ponchik filed a civil suit against David Lare, Fred Figueroa, Georgia Cross, WCF, and CCA seeking declaratory relief as well as back wages. Ponchik also filed a "Uniform Civil Affidavit of Indigency" declaring that due to poverty he was unable to bear the expenses of the lawsuit. On December 5, 2002, the Defendants filed a motion to dismiss, asserting that Ponchik had failed to comply with both Tennessee Code Annotated § 41-21-805 and Tennessee Code Annotated § 41-21-806. Tennessee Code Annotated § 41-21-805 provides:

(a) Any inmate who files a claim with an affidavit of inability to pay costs shall file a separate affidavit with the following information:

(1) A complete list of every lawsuit or claim previously filed by the inmate, without regard to whether the inmate was incarcerated at the time any claim or action was filed; and

(2) For each claim or action listed in subsection (a):

(A) The operative facts for which relief was sought;

(B) The case name, case number and court in which the suit or claim was filed;

(C) The legal theory on which the relief sought was based;

(D) The identification of each party named in the action; and

(E) The final result of the action, including dismissal as frivolous or malicious under this part or otherwise.

(b) If the affidavit filed under this section states that a previous suit was dismissed as frivolous or malicious, the affidavit must state the date of the final order affirming the dismissal.

(c) The affidavit must be accompanied by a current certified copy of the inmate's trust account statement.

Thus, Section 41-21-805 requires an inmate filing a lawsuit *in forma pauperis* to file an affidavit listing all previously filed lawsuits and claims, and the final result of each. Tennessee Code

Annotated § 41-21-806 provides:

- (a) An inmate who files a claim that is subject to review by the grievance committee established by the department shall file with the court an affidavit stating the date that the grievance was filed and the date of the final decision from the grievance committee.
- (b) The court shall dismiss the claim if the inmate fails to file the claim before the thirty-first day after the date the inmate receives the final decision from the grievance committee.
- (c) If a claim is filed before the grievance procedure is complete, the court shall stay the proceeding with respect to the claim for a period not to exceed ninety (90) days to permit completion of the grievance procedure.

Therefore, Section 41-21-806 requires that the inmate file an affidavit stating the date his grievance was filed and the date of the final decision on his grievance by the prison grievance committee. On February 21, 2001, the trial court entered an order finding that the Defendants' motion was "well taken" and dismissing Ponchik's claims with prejudice. From this order, Ponchik appeals.

The motion to dismiss filed by the defendants in this case is governed by this Court's recent holding in **Block v. Crants**, No. W2000-01917-COA-R3-CV, 2001 Tenn. App. LEXIS 306 (Tenn. Ct. App. Apr. 30, 2001). The defendants in **Block** asserted that the plaintiff, a Wisconsin prisoner incarcerated at WCF, had failed to comply with Tennessee Code Annotated §§ 41-21-805 and 806. *Id.* at *3. The Court first noted that, "with respect to lawsuits by inmates, the General Assembly has specifically defined 'inmate' as 'a person housed in a facility operated by the [department of correction] or housed in a county jail.'" *Id.* at *5 (quoting Tenn. Code Ann. § 41-21-801(4)). Because plaintiff was not incarcerated at a facility operated by the department of correction, the Court found that he was not an "inmate" for purposes of Tennessee Code Annotated § 41-21-805 and, therefore, was not required to file an affidavit listing previously filed claims and lawsuits. *Id.* at *5-6. Furthermore, the Court found that the requirements of § 41-21-806 were not applicable since that section only applied to grievance committees established by the department of correction and not grievance committees established by CCA. *Id.* at *7-8. Similarly, in this case, Ponchik was incarcerated at WCF and, therefore, his lawsuit was not subject to the requirements of §§ 41-21-805 and 806.¹

¹ Even if Tennessee Code Annotated §§ 41-21-805 and 806 applied, the record in this cause includes filings by Ponchik which in fact comply with these statutes. Ponchik filed an "Inmate affidavit Pursuant to T.C.A. § 41-21-801 et seq" which lists eight previously filed lawsuits with a description of each action as well as its status, attached a copy of the grievance he filed, with a notation on the grievance form that it was denied. Surprisingly, the defendants' motion to dismiss makes no reference whatsoever to these documents in the record, merely making the conclusory allegation that Ponchik failed to comply with the statutes. The trial court's order of dismissal likewise makes no reference to the documents filed by Ponchik, instead reciting that the defendants' motion to dismiss was "well taken."

The decision of the trial court is reversed and the cause is remanded for further proceedings not inconsistent with this Opinion. Costs of this appeal are assessed against the defendant/appellees, David Lare, Fred Figueroa, Georgia Cross, Whiteville Correctional Facility, and Corrections Corporation of America, for which execution may issue if necessary.

HOLLY KIRBY LILLARD, JUDGE